

## Ava Cassady

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**From:** Bob O'Halloran  
**Sent:** Wednesday, April 17, 2019 2:41 PM  
**To:** Holly E. Pettit; amm@seifer-yeats.com; cmarks@msmlegal.com; Doug Hookland; gragg@seifer-yeats.com; Joe R. Traylor; rscholz@msmlegal.com  
**Cc:** Pam Webster; Ava Cassady  
**Subject:** RE: 3:18-cv-01905-MO United States of America, for the use and benefit of Consolidated Electrical Distributors, Inc. v. Nova Group, Inc. et al

Hello Holly,

As we discussed, because we appear to be at an impasse about The New IEM's request for a deadline as a condition for the TRO motion being moot, I'm preparing a joint Notice/Status Update to the court regarding the TRO Motion. I'll have that circulated immediately for filing prior to 5 pm.

Best,

Bob

**Bob O'Halloran, Jr.**  
**Scott Hookland LLP**  
**MAIL:** Post Office Box 23414 Tigard, Oregon 97281  
**STREET:** 9185 SW Burnham Street, Tigard, Oregon 97223  
**PHONE:** 503-620-4540  
**FAX:** 503-620-4315  
**TOLL FREE:** 800-334-8986  
**E-MAIL:** [bob@scott-hookland.com](mailto:bob@scott-hookland.com)  
**WEBSITE:** [www.scott-hookland.com](http://www.scott-hookland.com)

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**From:** Holly E. Pettit <hep@hartwagner.com>  
**Sent:** Wednesday, April 17, 2019 1:52 PM  
**To:** Bob O'Halloran <bob@scott-hookland.com>; amm@seifer-yeats.com; cmarks@msmlegal.com; Doug Hookland <drh@scott-hookland.com>; gragg@seifer-yeats.com; Joe R. Traylor <JRT@hartwagner.com>; rscholz@msmlegal.com  
**Cc:** Pam Webster <pkw@scott-hookland.com>  
**Subject:** RE: 3:18-cv-01905-MO United States of America, for the use and benefit of Consolidated Electrical Distributors, Inc. v. Nova Group, Inc. et al

Thank you, Bob. It looks like IEM will need to file a response to the TRO motion putting forth our position that it is moot and that the substantive issues will be address in the motion to dismiss or stay argument and briefing.

The court asks for a proposed TRO hearing date. Your previously proposed dates of April 24 at 10 am works for us, if it works for others.

Thanks,

**Holly Pettit**

Hart Wagner, LLP  
1000 S.W. Broadway, 20th Floor  
Portland, Oregon 97205  
503-222-4499

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**From:** Bob O'Halloran <[bob@scott-hookland.com](mailto:bob@scott-hookland.com)>

**Sent:** Wednesday, April 17, 2019 1:31 PM

**To:** Holly E. Pettit <[hep@hartwagner.com](mailto:hep@hartwagner.com)>; [amm@seifer-yeats.com](mailto:amm@seifer-yeats.com); [cmarks@msmlegal.com](mailto:cmarks@msmlegal.com); Doug Hookland <[drh@scott-hookland.com](mailto:drh@scott-hookland.com)>; [gragg@seifer-yeats.com](mailto:gragg@seifer-yeats.com); Joe R. Traylor <[JRT@hartwagner.com](mailto:JRT@hartwagner.com)>; [rscholz@msmlegal.com](mailto:rscholz@msmlegal.com)

**Cc:** Pam Webster <[pkw@scott-hookland.com](mailto:pkw@scott-hookland.com)>

**Subject:** RE: 3:18-cv-01905-MO United States of America, for the use and benefit of Consolidated Electrical Distributors, Inc. v. Nova Group, Inc. et al

Hello Holly,

CED cannot agreed to put an artificial deadline on how long The New IEM has to wait before it can resume trying to compel arbitration. Though I'm sympathetic to your concern for getting a decision on the motion to dismiss soon, CED cannot control when the court will decide that motion any more than The New IEM. Further, if it's the New IEM's position that it will take action to compel arbitration after June 3, 2019 absent a court order, then the TRO motion is still live. Though I'm unsure what those actions could be given AAA's decision that it lacks jurisdiction, CED should not have to continue to defend against those actions.

To the issues you identified with my wording, CED would of course want to continue litigating claims in arbitration if ordered by the court. If my e-mail from earlier today implied anything else, that was not intended. As for your second point, as mentioned above, I'm unsure what actions The New IEM could take that are reasonable, as AAA has already said it lacks jurisdiction.

In sum, absent agreement from The New IEM to take no further action to compel arbitration, other than completing briefing and argument on the motion to dismiss, unless and until the court orders CED and The New IEM to arbitrate claims at issue in this case, I believe that CED is forced to notify the court that the TRO motion is still live, and that the court should set a hearing in the next two weeks. We'd also ask that the court set a hearing on the motion to dismiss before June 3, 2019 in order to address your concern about a delayed decision from the court.

Best,

Bob

**Bob O'Halloran, Jr.**

**Scott Hookland LLP**

**MAIL:** Post Office Box 23414 Tigard, Oregon 97281

**STREET:** 9185 SW Burnham Street, Tigard, Oregon 97223

**PHONE:** 503-620-4540

**FAX:** 503-620-4315

**TOLL FREE:** 800-334-8986

**E-MAIL:** [bob@scott-hookland.com](mailto:bob@scott-hookland.com)

**WEBSITE:** [www.scott-hookland.com](http://www.scott-hookland.com)

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**From:** Holly E. Pettit <[hep@hartwagner.com](mailto:hep@hartwagner.com)>  
**Sent:** Wednesday, April 17, 2019 12:14 PM  
**To:** Bob O'Halloran <[bob@scott-hookland.com](mailto:bob@scott-hookland.com)>; [amm@seifer-yeats.com](mailto:amm@seifer-yeats.com); [cmarks@msmlegal.com](mailto:cmarks@msmlegal.com); Doug Hookland <[drh@scott-hookland.com](mailto:drh@scott-hookland.com)>; [gragg@seifer-yeats.com](mailto:gragg@seifer-yeats.com); Joe R. Traylor <[JRT@hartwagner.com](mailto:JRT@hartwagner.com)>; [rscholz@msmlegal.com](mailto:rscholz@msmlegal.com)  
**Cc:** Pam Webster <[pkw@scott-hookland.com](mailto:pkw@scott-hookland.com)>  
**Subject:** RE: 3:18-cv-01905-MO United States of America, for the use and benefit of Consolidated Electrical Distributors, Inc. v. Nova Group, Inc. et al

Bob –

IEM is willing to agree that it will take no further action to compel arbitration other than in completing briefing and argument for the pending motion to dismiss or stay, until after the Court resolves the pending motion to dismiss or stay or June 3, 2019, whichever occurs first.

This revision addresses two potential problems with the original proposed wording. First, if the court rules in IEM's favor on the pending motion, either CED or IEM would be expected to renew arbitration. For example, if the Court dismisses the third-party claim against IEM, ruling that the matter should be in arbitration, we presume CED would still want to pursue its claims in arbitration, which the original wording would appear to prevent.

Second, IEM had a similar situation in New York state court and where they agreed to stay an arbitration while the NY court ruled on arbitrability; a year later, the court still had not made its ruling. They had to withdraw from the stay and try to move forward in arbitration, to get the matter moving. IEM does not want to be burned that way again, so they will not agree to refrain from seeking arbitration, at any time, ever, regardless of what occurs in the federal court case. I proposed a date of June 3, because I think it is extremely likely Judge Mosman will rule on the pending motions before that time, making the date irrelevant.

Would this agreement resolve CED's concerns regarding mootness of the current TRO motion?

Thank you,

**Holly Pettit**  
Hart Wagner, LLP  
1000 S.W. Broadway, 20th Floor  
Portland, Oregon 97205  
503-222-4499

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**From:** Holly E. Pettit  
**Sent:** Wednesday, April 17, 2019 10:29 AM  
**To:** 'Bob O'Halloran' <[bob@scott-hookland.com](mailto:bob@scott-hookland.com)>; [amm@seifer-yeats.com](mailto:amm@seifer-yeats.com); [cmarks@msmlegal.com](mailto:cmarks@msmlegal.com); Doug Hookland <[drh@scott-hookland.com](mailto:drh@scott-hookland.com)>; [gragg@seifer-yeats.com](mailto:gragg@seifer-yeats.com); Joe R. Traylor <[JRT@hartwagner.com](mailto:JRT@hartwagner.com)>; [rscholz@msmlegal.com](mailto:rscholz@msmlegal.com)  
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Thanks, Bob. I am checking with IEM regarding its position and will get back to you shortly.

**Holly Pettit**

Hart Wagner, LLP  
1000 S.W. Broadway, 20th Floor  
Portland, Oregon 97205  
503-222-4499

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**From:** Bob O'Halloran <[bob@scott-hookland.com](mailto:bob@scott-hookland.com)>

**Sent:** Wednesday, April 17, 2019 10:14 AM

**To:** [amm@seifer-yeats.com](mailto:amm@seifer-yeats.com); [cmarks@msmlegal.com](mailto:cmarks@msmlegal.com); Doug Hookland <[drh@scott-hookland.com](mailto:drh@scott-hookland.com)>; [gragg@seifer-yeats.com](mailto:gragg@seifer-yeats.com); Holly E. Pettit <[hep@hartwagner.com](mailto:hep@hartwagner.com)>; Joe R. Traylor <[JRT@hartwagner.com](mailto:JRT@hartwagner.com)>; [rscholz@msmlegal.com](mailto:rscholz@msmlegal.com)

**Cc:** Pam Webster <[pkw@scott-hookland.com](mailto:pkw@scott-hookland.com)>

**Subject:** RE: 3:18-cv-01905-MO United States of America, for the use and benefit of Consolidated Electrical Distributors, Inc. v. Nova Group, Inc. et al

Hello Everyone,

Regarding Judge Mosman's order that the parties file notice regarding the status and propose a hearing date for the motion for Temporary Restraining Order and Preliminary Injunction, CED would agree that the motion is moot if all parties agree to take no further action to compel arbitration other than in completing briefing and argument for the pending motion to dismiss from The New IEM.

If the parties all cannot agree on that point, CED's position is that the TRO motion is not moot, and a hearing should be set shortly. We'd request a hearing within the next two weeks, preferably on April 24, 2019 at 10 am, with court approval.

Please let me know your position by 2 pm this afternoon. If cannot reach an agreement by 2 pm, I will notify the court that the parties have conferred, but were unable to reach a consensus by the court's deadline. I will then request that the court set a hearing for the TRO motion at a date and time convenient for the court that is within the next two weeks.

Best,

Bob

**Bob O'Halloran, Jr.**

**Scott Hookland LLP**

**MAIL:** Post Office Box 23414 Tigard, Oregon 97281

**STREET:** 9185 SW Burnham Street, Tigard, Oregon 97223

**PHONE:** 503-620-4540

**FAX:** 503-620-4315

**TOLL FREE:** 800-334-8986

**E-MAIL:** [bob@scott-hookland.com](mailto:bob@scott-hookland.com)

**WEBSITE:** [www.scott-hookland.com](http://www.scott-hookland.com)

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**From:** [Kara Scheele@ord.uscourts.gov](mailto:Kara_Scheele@ord.uscourts.gov) <[Kara\\_Scheele@ord.uscourts.gov](mailto:Kara_Scheele@ord.uscourts.gov)> **On Behalf Of**

[Chambers\\_Mosman@ord.uscourts.gov](mailto:Chambers_Mosman@ord.uscourts.gov)

**Sent:** Monday, April 15, 2019 12:31 PM

**To:** [amm@seifer-yeats.com](mailto:amm@seifer-yeats.com); Bob O'Halloran <[bob@scott-hookland.com](mailto:bob@scott-hookland.com)>; [cmarks@msmlegal.com](mailto:cmarks@msmlegal.com); Doug Hookland

<[drh@scott-hookland.com](mailto:drh@scott-hookland.com)>; [gragg@seifer-yeats.com](mailto:gragg@seifer-yeats.com); [hep@hartwagner.com](mailto:hep@hartwagner.com); [jrt@hartwagner.com](mailto:jrt@hartwagner.com); [rscholz@msmlegal.com](mailto:rscholz@msmlegal.com)

Cc: [Chambers Mosman@ord.uscourts.gov](mailto:Chambers_Mosman@ord.uscourts.gov)

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Counsel,

The Court will be Granting the motion to continue the rule 16. The Court typically has the parties file a joint proposed case management schedule, and if needed, then the court would schedule a rule 16 conference. Please file a joint proposed case management schedule by May 17th, 2019. If the parties are still wanting to schedule a rule 16 hearing, we can set it for May 24th, 2019 at 10:30am?

The Court understands that the motion for a Temporary Restraining Order and Preliminary Injunction [49] to enjoin arbitration has been mooted by a subsequent decision by the arbitrator. The parties shall file notice with the Court no later than 5:00 PM on Wednesday, 4/17/2019, regarding the status and a proposed hearing date for the motion for Temporary Restraining Order and Preliminary Injunction [49].